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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LESTER DARNELL FONTNETTE,

Defendant and Appellant.

D055855

(Super. Ct. No. SCD211699)

APPEAL from a judgment of the Superior Court of San Diego County, Frank A. Brown, Judge. Affirmed.

A jury convicted Lester Darnell Fontnette of transportation of a controlled substance (Health & Saf. Code, § 11352, subd. (a); count 1), possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a); count 2), driving under the influence of a drug (Veh. Code, § 23152, subd. (a); count 3), being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a); count 4), and possession of paraphernalia used for narcotics (Health & Saf. Code, § 11364; count 5). Fontnette

admitted that he had suffered a prior strike conviction (Pen. Code,<sup>1</sup> §§ 667, subd. (b)-(i), 668, 1170.12), and that he had served three prior prison terms (§ 667.5, subd. (b), 668).

The trial court struck the prior prison terms and sentenced Fontnette to prison for a total term of six years: the low term of three years on count 1, doubled for the prior strike conviction under section 667, subdivision (e)(1). The court stayed sentence on counts 2 and 4 under section 654, and imposed concurrent sentences of 180 days in local custody, with credit for time served, on counts 3 and 5. Finally, the court imposed a two-year sentence for a probation violation that Fontnette incurred in unrelated case No. SCD204489, to be served concurrently with the sentence on count 1 in this case. Fontnette appeals. We affirm the judgment.

### FACTS

On February 8, 2008, officer Gregory Scallion noticed Fontnette driving erratically. Scallion followed Fontnette, and observed him cross over the lane divider and then go through a red light. Fontnette made several turns, cut off another car, and continued to periodically cross over the lane divider. Scallion was off duty at the time, so he called his dispatcher, who in turn reported the driver to the California Highway Patrol (CHP).

Fontnette entered the freeway, accelerated rapidly, and then slowed down. Fontnette straddled lanes, and his right turn signal remained on. Scallion continued to follow Fontnette until Fontnette pulled into a parking lot and stopped. At that point, CHP

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<sup>1</sup> All further statutory references are to the Penal Code.

officers Gerald Guzman and Jacob Sanchez arrived and approached Fontnette. The officers noticed a glass crack pipe in the center console of the car. Fontnette appeared to be very tired. His face was "droopy," and he was swaying to the side. He was slow to answer questions and his speech was slurred. Fontnette did not have a driver's license or other identification in his possession.

Guzman requested that Fontnette get out of the car. When Fontnette got out of the car, Guzman patted Fontnette down and found in his front shirt pocket a second glass pipe that Guzman believed to be the type used to smoke controlled substances. Guzman conducted several field sobriety tests and determined that Fontnette was under the influence of cocaine. Guzman asked Fontnette if he had used any drugs that evening, and Fontnette replied that he had used cocaine earlier in the afternoon.

Guzman read Fontnette his rights under *Miranda v. Arizona* (1966) 384 U.S. 434 and then placed him under arrest. Guzman found a small plastic container in a fanny pack that Fontnette was wearing. Inside the plastic container, Guzman discovered 12.25 grams of cocaine. When Guzman asked Fontnette what the substances in the plastic container was, Fontnette admitted that it was cocaine. Sanchez searched the car and found a digital scale with a white powdery substance on it, a box of baking soda, and a copper wire Brillo pad. Guzman testified that based on his experience, baking soda can be added to cocaine to increase the volume if it is going to be sold, and a Brillo pad can be used to hold cocaine in a glass pipe when it is smoked.

Guzman took Fontnette to the CHP office. At the CHP office, a drug recognition evaluator determined that Fontnette was under the influence of drugs. Fontnette admitted

to the evaluator that he had used free base cocaine earlier in the day. Fontnette's urine sample tested positive for cocaine and marijuana.

## DISCUSSION

Appointed appellate counsel has filed a brief summarizing the facts and proceedings below. Counsel presents no argument for reversal, but asks this court to review the record for error, as mandated by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel lists as possible, but not arguable, issues: (1) whether simple possession is a lesser included offense of transportation; (2) whether there is sufficient evidence to support the convictions; and (3) whether Fontnette's custody credits were calculated correctly.

We granted Fontnette permission to file a brief on his own behalf. He has not responded. A review of the record pursuant to *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738, including the possible issues listed pursuant to *Anders*, has disclosed no reasonably arguable appellate issues. Fontnette has been competently represented by counsel on this appeal.

DISPOSITION

The judgment is affirmed.

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AARON, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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NARES, J.